

Case 1:03-cr-10383-RGS Document 92 Filed 03/10/2008

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 03-10383-RGS
)	
JULIO FRANCO)	
)	

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY

Now comes the United States, by its attorneys, Michael J. Sullivan, United States Attorney, and David G. Tobin, Assistant U.S. Attorney, and hereby responds to Defendant Julio Franco's Motion for Discovery.

Defendant Franco is charged in a two-count indictment with conspiracy to possess with intent to distribute cocaine and attempted possession of cocaine. The investigation that resulted in the indictment was initiated by the Columbian National Police (CNP) in May 2003. As part of their investigation, the CNP obtained an eavesdropping warrant on May 29, 2003, for a Columbian payphone assigned telephone number (574) 412-2079. The CNP identified Paulino Salcedo ("SALCEDO"), a resident of Medellin, Columbia, as a member of an organization that used the Columbian payphone. The CNP intercepted a number of conversations over the Columbian payphone between SALCEDO and a narcotics trafficker in New Your City during which SALCEDO arranged for the shipment of fifty kilograms of cocaine.

The Drug Enforcement Administration ("DEA") in New York

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identified the narcotics trafficker intercepted over the Columbian wiretap speaking with SALCEDO. The DEA in New York identified two cell phones used by that individual and his associates to conduct narcotics business. The DEA in New York then determined that cellular telephone (310) 505-8943 was used by SALCEDO to conduct narcotics business with the New York based narcotics trafficker.

On September 12, 2003, the CNP obtained a Columbian court order to intercept communications over the cellular telephone used by SALCEDO [(310) 505-8942]. The CNP intercepted a conversation over that cellular telephone between SALCEDO and a narcotics trafficker in Boston, Massachusetts, known as "Ramon" and later identified as Defendant Franco. The intercepted call between SALCEDO and Defendant Franco demonstrated that Defendant Franco received multiple kilogram shipments of cocaine supplied by SALCEDO for distribution in the Boston area. The DEA in Boston obtained court authorization to intercept calls over a telephone used by Franco (Target Telephone).

In his Discovery Motion, Defendant Franco seeks "[a]ll documentation pertaining to the applications and issuance of the Columbian Warrants" obtained on May 29, 2003 and September 12, 2003.

The United States does not oppose Defendant Franco's Motion for Discovery, but alerts the Court that the United States is not

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in possession of the requested documents. The requested documents are in the possession of and under the control of Colombian law enforcement. The undersigned attorney for the United States will seek to obtain the requested documents from the Colombian national government through the protocols established by international treaties.¹ This process requires contact between the United States State Department and the Colombian national government. The United States cannot guarantee that the Colombian national government will honor the request and provide the documents sought by Defendant Franco. The process of formally requesting law enforcement assistance from a foreign nation often is time consuming and the United States will need a continuance in this case in order to pursue Defendant Franco's request.

The United States requests a stay in the proceedings in this matter in order to attempt to obtain the requested documents and further requests that any delay occasioned by the defendant's discovery request be excluded from the provisions of the Speedy

¹The undersigned attorney for the United States will seek authorization from his immediate superiors, the Department of Justice, and the Department of State to petition the Colombian national government for the requested documents. The undersigned attorney for the United States reserves the right to cease efforts in this regard if his immediate superiors, the Department of Justice, or the Department of State indicates that such a request is against existing policy or practice. In such an event, the undersigned attorney for the United States will immediately notify the Court.

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Trial Act.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:/s/ David G. Tobin
DAVID G. TOBIN
Assistant U.S. Attorney

Date: March 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ David G. Tobin
DAVID G. TOBIN
Assistant United States Attorney

Date: March 10, 2008